

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

MATTHEW MCDERMOTT,

Plaintiff,

- against -

NATIONAL HERALD, INC.

Defendant.

Docket No. \_\_\_\_\_

JURY TRIAL DEMANDED

**COMPLAINT**

Plaintiff Matthew McDermott (“McDermott” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant National Herald, Inc. (“National” or “Defendant”) hereby alleges as follows:

**NATURE OF THE ACTION**

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph of Osborn Playground in Brooklyn the evening of a rape in the park owned and registered by McDermott, a New York City based photojournalist. Accordingly, Sands seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

**JURISDICTION AND VENUE**

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or are doing business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

### **PARTIES**

5. McDermott is a professional photojournalist in the business of licensing his photographs to online, print, and television stations for a fee, having a usual place of business at 28-07 Newtown Avenue, Astoria, NY 11102. McDermott photographs have had a profound effect helping to stimulate the global heart of giving, leading to the contribution of millions of dollars to charities and worldwide humanitarian efforts. Matthew's work from Haiti's earthquake devastated streets inspired a generous outpouring of support especially by his "Kiki" photo, the young boy rescued unharmed with arms out stretched in joy after being trapped under rubble for eight days. Some of Matthew's international projects include the documentation of Darfur's genocide survivors and the humanitarian relief efforts brought to that region, wide spread famine in Niger, detainees at Cuba's Guantanamo Bay, the massive earthquake devastation in Pakistan and most recently in Haiti, to struggles in Beirut, Belfast, Kosovo, and others. Nationally, Matthew captured the horrific events of the 9/11/2001 World Trade Center attacks, human sufferings in New Orleans after Hurricane Katrina, and the local effects upon the Gulf's fishing community following the massive BP oil spill.

6. Upon information and belief, National is a corporation duly organized and existing under the laws of the State of New York, with a principal place of business at 37-10 30<sup>th</sup> Street, Long Island City, New York 11101-2614. At all times material hereto, National has owned and operated and continues to own and operate a website at the URL: [www.TheNationalHerald.com](http://www.TheNationalHerald.com) (the "Website").

## **STATEMENT OF FACTS**

### **A. Background and Plaintiff's Ownership of the Photograph**

7. On or about January 10, 2016, an 18-year old girl in Osborn Playground, a park in Brownsville, Brooklyn, was suspected to be raped by five adolescents. One of the teenagers had a firearm and pointed it at the girl and her father. The father darted to get help but the suspects fled the scene. Two of the teenagers were taken to the 73<sup>rd</sup> Precinct station by their parents and others were found shortly after. Brooklyn politicians were horrified when the New York Police Department waited two days before telling anyone about the rape. The incident was not only heavily covered by the press in New York but it also gained national attention.

8. On or about January 10, 2016, McDermott photographed the crime scene at Osborn Playground where police were still investigating the matter. A true and correct copy of said photograph (the "Photograph") is attached hereto as Exhibit A (*Osborn Playground*).

9. McDermott then licensed the Photograph to the New York Post. On January 11, 2016, the New York Post ran an article that featured the Photograph in its web edition entitled *Teen Suspects Arrested in Brutal Gang Rape at Brooklyn Park*. See <http://nypost.com/2016/01/11/teen-suspects-arrested-in-brutal-gang-rape-at-brooklyn-park/> (last visited April 7, 2016). McDermott's name was featured in a gutter credit identifying him as the photographer of the Photograph. A true and correct copy of the web edition of the article is attached hereto as Exhibit B.

10. McDermott is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyrights thereto.

11. The Photograph was registered with Copyright Office and was given Copyright Registration Number VA 1-998-044, effective March 31, 2016. A true and correct copy of the Certificate of Registration of the Photograph is attached hereto as Exhibit C (VA 1-998-044).

**B. Defendant's Infringing Activities**

12. Upon information and belief, on or about January 12, 2016, National ran an article on the Website entitled *4 Brooklyn Teens Arrested in Gang Rape* (<http://www.thenationalherald.com/111494/>). The article prominently featured the Photograph. A true and correct copy of the article is attached hereto as Exhibit D.

13. National did not license the Photograph from Plaintiff for use on its article, nor did National have plaintiff's permission or consent to publish the Photograph on its Website.

**CLAIM FOR RELIEF**  
**(COPYRIGHT INFRINGEMENT AGAINST NATIONAL)**  
**(17 U.S.C. §§ 106, 501)**

14. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-13 above.

15. National infringed Plaintiff's copyright in the Photograph by reproducing and publically displaying the Photograph in an article on the Website. National is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

16. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyrights and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

17. Upon information and belief, the foregoing acts of infringement by National have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.



18. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyrights and exclusive rights under copyright, Plaintiff is entitled to damages and defendant's profits pursuant to 17 U.S.C. § 504(b) for each infringement.

19. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Photograph, pursuant to 17 U.S.C. § 504(c).

20. Plaintiff further is entitled to his attorney's fees and full costs pursuant to 17 U.S.C. § 505.

21. Defendant's conduct, described above, is causing, and unless enjoined and restrained by this Court, will continue to cause Plaintiff irreparable injury that cannot be fully compensated by or measured in money damages. Plaintiff has no adequate remedy at law.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant National be adjudged to have infringed upon Plaintiff's copyright in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded his costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505;
5. That Plaintiff be awarded pre-judgment interest; and

6. Such other and further relief as the Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York  
April 7, 2016

LIEBOWITZ LAW FIRM, PLLC

By: Richard P. Liebowitz  
Richard P. Liebowitz

11 Sunrise Plaza, Suite 301  
Valley Stream, NY 11580  
Tel: (516) 233-1660  
RL@LiebowitzLawFirm.com

*Attorney for Plaintiff Matthew McDermott*